

Luke Andrew Busby, Ltd.
 Nevada State Bar No. 10319
 316 California Ave.
 Reno, NV 89509
 775-453-0112
 luke@lukeandrewbusbyltd.com
Attorney for the Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COURAGE UHUMWNOMA OSAWE,

Plaintiff(s),

vs.

DMV INVESTIGATOR JENNIFER
 TINSLEY, DMV INVESTIGATOR
 BRIAN BOWLES, DMV
 INVESTIGATOR WILLIAM LYONS
 and DMV SERGEANT TODD
 PARDINI; and JOHN DOES I through
 X, inclusive

Defendant(s).

Case No. 3:18-cv-00600-RCJ-WGC

**RESPONSE IN OPPOSITION
 TO MOTION TO STAY
 DISCOVERY**

**ORAL ARGUMENT
 REQUESTED**

COMES NOW, COURAGE UHUMWNOMA OSAWE, (“Osawe” or “Plaintiff”), by
 and through the undersigned counsel, and hereby files the following Response in Opposition
 to the February 26, 2019 Motion to Stay Discovery (“Motion”) (Doc #17) filed by DMV
 INVESTIGATOR JENNIFER TINSLEY (“Tinsley”), DMV INVESTIGATOR BRIAN
 BOWLES (“Bowles”), DMV INVESTIGATOR WILLIAM LYONS (“Lyons”), and DMV

1
2 SERGEANT TODD PARDINI (“Pardini”) (collectively “the Defendants”); and JOHN
3 DOES I through X, inclusive.

4 This Opposition is made and based upon all of the pleadings and records on file for
5 this proceeding together with every exhibit that is mentioned herein or attached hereto (each
6 of which is incorporated by this reference as though it were set forth hereat in haec verba), if
7 any there be, as well as the points and authorities set forth directly hereinafter.
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10 **MEMORANDUM OF POINTS AND AUTHORITIES**


11 The Defendants argue that once a Defendant pleads a defense of qualified immunity
12 discovery should not be allowed. See Motion at 2:6 quoting *Siegert v. Gilley*, 500 U.S. 226, 231
13 (1991). The Defendants cite cases in which Courts (or appeals Courts) have found that
14 discovery should be stayed when immunity is a threshold matter, including *Behrens v. Pelletier*,
15 516 U.S. 299, 308 (1996) and *Crawford-El v. Britton*, 523 U.S. 574, 590 (1998).
16

17 There is no absolute rule as to whether the issue of qualified immunity must be
18 resolved prior to permitting discovery. See *Anderson v. Creighton*, 483 U.S. 635, 646, 107 S. Ct.
19 3034, 3042 (1987) where there are disputed issues of fact discovery may be necessary before a
20 motion for summary judgment on qualified immunity grounds can be resolved. As argued in
21 the Plaintiff’s February 13, 2019, Response in Opposition to the February 4, 2019 Motion for
22 Summary Judgment (Doc #12), Osawe cannot be expected to present facts essential to
23 justify his opposition to the Defendants qualified immunity claims, such as the applicable
24 phone records from the incident, records of any communications between the Defendants
25 relevant to Osawe’s claims, testimony from the Defendants as to their communications
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1 during the sting operation at issue in this case, the identity of the alleged complainant
2 identified in the probable cause reports of the Defendants and the nature of his/her
3 complaint, any evidence related to the knowledge of the Defendants as to the exception in
4 the law that would permit Osawe to sell three vehicles within a 12 month period and their
5 communications to the Plaintiff regarding the exception, and records of the Defendants
6 generally, without any discovery. *See McMillen v. Windham*, No. 3:16-CV-558, 2018 WL
7 652830, at *2–3 (W.D. Ky. Jan. 31, 2018) - in some circumstances refusing to stay discovery
8 pending resolution of motion to dismiss based on qualified immunity is justified, i.e. where a
9 litigant prematurely seeks summary judgment, as is the case in this matter.
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13 WHEREFORE, the Plaintiff requests that the Defendant's Motion be denied by the
14 Court.
15

16 Respectfully submitted this March 6, 2019.

17 By: 
18 Luke Busby
19 Nevada State Bar No. 10319
20 316 California Ave.
21 Reno, NV 89509
22 775-453-0112
23 luke@lukeandrewbusbyltd.com
24 *Attorney for the Plaintiff*
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5, I certify that on the date provided below, I caused service to be completed by:

- _____ personally delivering;
- _____ delivery via Reno/Carson Messenger Service;
- _____ sending via Federal Express (or other overnight delivery service);
- _____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,
- XXXX delivery via electronic means (ECF, fax, eflex, NEF, etc.)

a true and correct copy of the foregoing document addressed to:

AARON D. FORD
Attorney General
NATHAN L. HASTINGS (Bar No. 11593)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 Wright Way
Carson City, NV 89711
(775) 684-4606 (phone)
(775) 684-4601 (fax)
NHastings@ag.nv.gov
Attorney for Defendants

By:  Dated: 3/6/2019
Luke Busby